

§ 26.201

duty, then the individual must be determined to be fit for duty.

(2) If there is no conclusive evidence of an FFD policy violation but there is a significant basis for concern that the individual may be impaired while on duty, then the subject individual must be determined to be unfit for duty. This result does not constitute a violation of this part nor of the licensee's or other entity's FFD policy, and no sanctions may be imposed. However, the professional who made the determination of fitness shall consult with the licensee's or other entity's management personnel to identify the actions required to ensure that any possible limiting condition does not represent a threat to workplace or public health and safety. Licensee or other entity management personnel shall implement the required actions. When appropriate, the subject individual may also be referred to the EAP.

(d) Neither the individual nor licensees and other entities may seek a second determination of fitness if a determination of fitness under this part has already been performed by a qualified professional employed by or under contract to the licensee or other entity. After the initial determination of fitness has been made, the professional may modify his or her evaluation and recommendations based on new or additional information from other sources including, but not limited to, the subject individual, another licensee or entity, or staff of an education or treatment program. Unless the professional who made the initial determination of fitness is no longer employed by or under contract to the licensee or other entity, only that professional is authorized to modify the evaluation and recommendations. When reasonably practicable, licensees and other entities shall assist in arranging for consultation between the new professional and the professional who is no longer employed by or under contract to the licensee or other entity, to ensure continuity and consistency in the recommendations and their implementation.

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Subpart I—Managing Fatigue

§ 26.201 Applicability.

The requirements in this subpart apply to the licensees and other entities identified in § 26.3(a), and, if applicable, (c) and (d). The requirements in §§ 26.203 and 26.211 apply to the individuals identified in § 26.4 (a) through (c). In addition, the requirements in § 26.205 through § 26.209 apply to the individuals identified in § 26.4(a).

§ 26.203 General provisions.

(a) *Policy.* Licensees shall establish a policy for the management of fatigue for all individuals who are subject to the licensee's FFD program and incorporate it into the written policy required in § 26.27(b).

(b) *Procedures.* In addition to the procedures required in § 26.27(c), licensees shall develop, implement, and maintain procedures that—

(1) Describe the process to be followed when any individual identified in § 26.4(a) through (c) makes a self-declaration that he or she is not fit to safely and competently perform his or her duties for any part of a working tour as a result of fatigue. The procedure must—

(i) Describe the individual's and licensee's rights and responsibilities related to self-declaration;

(ii) Describe requirements for establishing controls and conditions under which an individual may be permitted or required to perform work after that individual declares that he or she is not fit due to fatigue; and

(iii) Describe the process to be followed if the individual disagrees with the results of a fatigue assessment that is required under § 26.211(a)(2);

(2) Describe the process for implementing the controls required under § 26.205 for the individuals who are performing the duties listed in § 26.4(a);

(3) Describe the process to be followed in conducting fatigue assessments under § 26.211; and

(4) Describe the disciplinary actions that the licensee may impose on an individual following a fatigue assessment, and the conditions and considerations for taking those disciplinary actions.